

**Minutes of
S.C. Board of Health and Environmental Control
Meeting**

January 13, 2005

The S.C. Board of Health and Environmental Control met on Thursday, January 13, 2005, at 10:00 a.m. in the S.C. Department of Health and Environmental Control Board Room, 2600 Bull Street, Columbia, S.C. (Attachment 0-1)

The following members were in attendance:

Elizabeth M. Hagood, Chairman
Member-at-large

L. Michael Blackmon, Secretary
Lancaster, 5th District

Carl L. Brazell
Columbia, 2nd District

Steven G. Kisner
Aiken, 3rd District

Coleman F. Buckhouse, MD
Florence, 6th District

Also in attendance were Commissioner Earl Hunter and guests. (Attachment 0-2)

Ms. Hagood gave the invocation.

Chairman Hagood stated notice of this meeting has been provided to all persons, organizations and news media, which have requested notification, as required by section 30-4-80(e) of the South Carolina Code of Laws.

Item 1: Consideration of November 10, 2004, meeting minutes - For Approval (Attachment 1-1)

Mr. Brazell moved, seconded by Dr. Buckhouse, to approve the minutes of the November 10, 2004, meeting. Approved

Item 2: Monthly Award for Excellence – November and December 2004 (Attachment 2-1)

The following were recognized by Commissioner Hunter:

November - Commissioner's Office – Elsie Montgomery;
Environmental Quality Control – Christine Sanford-Coker;
Health Services – Betty Jo Sanders;
Appalachia I Health District – Lisa Newton;
Appalachia II Health District – Paulette Hannon;
Catawba Health District – Scott Kennedy;
Edisto/Savannah Health District – Elloree Health Department Staff;
Low Country Health District – Kathy Goen;
Palmetto Health District – Vickie Shealy;
Pee Dee Health District – Rebecca Snipes;
Trident Health District – Thelma Sanders;
Upper Savannah Health District – The Cares Implementation Team/Deanna Willis, Betty Cervenka, Adriane Able, Michael Burke, Larry Gaither;
Waccamaw Public Health District – Dawn Prosser;
OCRM/Charleston – Alarice Robinson.

December - Commissioner's Office – Patty Dod Lolas;
Environmental Quality Control – Robertha Dorsey;
Health Regulations – Mary Peters, Patrick Bradshaw;
Health Services – Edith Hawkins;
Appalachia I Health District – Rhonda Knighten;
Appalachia II Health District – Karen Jordan;
Appalachia III Health District – Lisa Fuselier;
Low Country Health District – Evelyn Ginn;
Palmetto Health District – Richland County Health Department's "Monday Team"/Mary Allen, Barry Brown; Joann Carter, Corine Cheeks, Ann Lamphere, Lisa Legrand, Laura Mitchell, Xuan Phan, Beverly Pittman, Karol Rembert, Arlene Rowland, Barbara Scarborough, Linda Schmidt, Shari Singleton, Cindy Smoak, Linda Sweat, Janet Ward, Wanda Ward, Betty Washington, Phyllis Weston;
Pee Dee Public Health District – The DO Staff;
Upper Savannah Health District – Claudia Stokes;
Waccamaw Public Health District – Kathy Gray;
Wateree Health District – Chris Blakely, Robin Krebs.

Item 3: Motion to Dismiss – Juris Gulbis and Beverly Gulbis v. South Carolina Department of Health and Environmental Control, Docket No. 03-ALJ-07-0257-CC (Attachment 3-1)

Mr. Carl Roberts, General Counsel, introduced the case to the Board. Mr. Matthew Penn, Esq., represented the Department. Ms. Teresa Gulbis Shepherd represented Mr. and Mrs. Gulbis.

Mr. Penn moved to dismiss the appeal. Ms. Shepherd consented to the dismissal.

Mr. Brazell moved, seconded by Mr. Kisner, to dismiss the appeal. Approved.

A verbatim transcript of these proceedings is included as part of the permanent record.
(Attachment 3-2)

Item 4: Public Hearing and Request for Final Approval – Proposed Revision of Regulation 61-3, The Practice of Selling and Fitting Hearing Aids, State Register Document No. 2927, Legislative Review is Required (Attachment 4-1)

Mr. Dennis Gibbs and Suzanne Hicks, Bureau of Health Licensing, presented this item to the Board. As a result of the review of this regulation, statutory mandates, and need to update and improve the overall quality of the regulation, the Department is proposing to revise R.61-3. This proposed revision will be rewritten in its entirety to include, but not be limited to: definitions; licensing requirements; licensing fee amounts; reporting requirements; Departmental consultations; enforcement action procedures; sections related to temporary permits; sponsor duties; continuing education; sales procedures; exceptions related to hearing aid specialists; add a severability clause, and change the title to: *“The Practice of Specializing in Hearing Aids.”*

A public hearing was conducted. (Attachment 4-2)

Mr. Kisner moved, seconded by Mr. Blackmon, to find for the need and reasonableness of the proposed regulation and approve it for submission to the legislature for review. Approved.

The Board directed staff to pursue the following issues: Certification for training on Cerumen Removal and Tympanometry.

A verbatim transcript of these proceedings is included as part of the permanent record.
(Attachment 4-3)

Item 5: Public Hearing and Request for Final Approval – Proposed Amendment to Regulation 61-62, Air Pollution Control Regulations and Standards, to revise Regulation 61-62.1, Definitions and General Requirements; Regulation 61-62.5, Standard 7, Prevention of Significant Deterioration, and promulgate a new Regulation 61-62.5, Standard 7.1, Nonattainment New Source Review, and to amend the South Carolina Implementation Plan (SIP), State Register Document No. 2943, Legislative Review is Required (Attachment 5-1)

Ms. Heather Preston, Bureau of Air Quality presented this item to the Board. On December 31, 2002 (67 FR 80185), the United States Environmental Protection Agency (EPA) finalized revisions governing the New Source Review (NSR) program mandated by parts C and D of title I of the Clean Air Act (CAA). The major NSR program contained in parts C and D of title I of the CAA is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under the CAA. In areas not

meeting health-based National Ambient Air Quality Standards (NAAQS), the program is implemented under the requirements of part D of title I of the CAA. This is referred to as the nonattainment NSR program. In areas meeting the NAAQS (attainment areas), the NSR requirements under part C of title I apply. This is referred to as the Prevention of Significant Deterioration (PSD) program. Collectively, these programs are commonly referred to as the major NSR program. In accordance with EPA's final rule revisions, state agency programs must adopt and submit revisions to their State Implementation Plans (SIPs) to include the minimum program elements outlined in the final rules. States may choose to adopt provisions that differ from the final rules, however, to be approvable under the SIP, the state must show that the regulation is at least as stringent as EPA's amendments. In accordance with these rules, states are required to adopt and submit revisions to their SIPs no later than January 2, 2006.

A public hearing was conducted. (Attachment 5-2)

Mr. Brazell moved, seconded by Dr. Buckhouse, to find for the need and reasonableness of the proposed regulation and approve it for submission to the legislature for review. Approved.

A verbatim transcript of these proceedings is included as part of the permanent record. (Attachment 5-3)

On behalf of the Board, Ms. Hagood said a very special "thanks" to staff for their diligent work with stakeholders to come to a satisfactory agreement on this issue.

Item 6: Public Hearing and Request for Final Approval – Proposed Amendment to Regulation 61-105, Infectious Waste Management, State Register Document No. 2944, Legislative Review is Required (Attachment 6-1)

Mr. John Litton, Bureau of Land and Waste Management, presented this item to the Board. Pursuant to S.C. Code Section 44-93-10 et. seq., the Department proposes to amend R.61-105. The proposed amendments will clarify and update requirements for those involved in infectious waste management as follows: The South Carolina General Assembly amended the Infectious Waste Management Act by Act 351, effective July 20, 2002. This amendment of Section 44-93-100 requires that used sharps, such as, needles and syringes, from generators producing less than 50 pounds of infectious waste per month be treated prior to landfill disposition. The Department is clarifying Section G (Small Quantity Generators) of R. 61-105 by more clearly stating that if small quantity generators produce 50 pounds of infectious waste or more in any one calendar month, they must manage the waste according to R.61-105. Generator status may be re-evaluated after the generator produces documentation showing 12 consecutive calendar months of waste production less than 50 pounds every month. Stylistic changes that may include corrections for clarification, references, and spelling will be made to improve the overall text of the regulation

A public hearing was conducted. (Attachment 6-2)

Dr. Buckhouse moved, seconded by Mr. Brazell, to find for the need and reasonableness of the proposed regulation and approve it for submission to the legislature for review. Approved.

A verbatim transcript of these proceedings is included as part of the permanent record. (Attachment 6-3)

Item 7: Proposed Amendment of Regulation 61-63, Radioactive Material (TITLE A) (Federal Compliance), Exempt from Legislative Review – For Decision (Attachment 7-1)

Mr. Pearce O’Kelley, Bureau of Radiological Health, presented this item to the Board. The Nuclear Regulatory Commission continually updates regulations, and state regulations are amended regularly to incorporate federal updates. Section 274 of the Atomic Energy Act of 1954, as amended, and the Agreement between the U.S. Nuclear Regulatory Commission and the State of South Carolina, require that we adopt federal regulations for compatibility. Pursuant to statutory authority provided in S.C. Code Section 13-7-10 et seq., the Department is requesting approval to amend Regulation 61-63, Radioactive Material (Title A). Proposed revisions are required to maintain compatibility with regulations promulgated by the U.S. Nuclear Regulatory Commission in Title 10, Code of Federal Regulations. The intended action revises the skin dose limit (Part III), and amends the regulations regarding the medical use of radioactive materials (Parts II, III and IV). Proposed regulations will comply with 10 CFR Parts 20, 32 and 35, Final Rules, published in the Federal Register on April 5, 2002, and April 24, 2002 (Volume 67).

Mr. Blackmon moved, seconded by Dr. Buckhouse, to grant initial approval to publish a Notice of Proposed Regulation in the State Register, to provide opportunity for public comment, to conduct a staff informational forum, to receive and consider comments, and allow staff to proceed to public hearing before the Board. Approved.

Item 8: Proposed New Regulation 61- , Emergency Health Powers Act, Legislative Review is Required – For Initial Approval (Attachment 8-1)

Mr. Max Learner, Director, Office of Public Health Preparedness, presented this item to the Board. The Department has authority derived from its organic statute (Title 44, Chapter 1 and expressed both in that statute and in Regulation 61-20 to respond to outbreaks of communicable and infectious disease. In particular, the Department has the authority and responsibility to impose quarantines and take other measures to control the spread of disease and to treat the victims of such diseases. However, existing regulations do not provide specific procedures for doing so. In 2002, the General Assembly enacted the Emergency Health Powers Act, which imposes specific additional requirements on DHEC. Staff, in consultation with other health care provider and public safety organizations, concluded that a new regulation is needed to complement existing regulations and implement the Emergency Health Powers Act.

Dr. Buckhouse moved, seconded by Mr. Brazell, to grant initial approval to publish a Notice of Proposed Regulation in the State Register, to provide opportunity for public comment, to conduct a staff informational forum, to receive and consider comments, and allow staff to proceed to public hearing before the Board. Approved.

Item 9: Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation (October 16, 2004 through November 30, 2004) – For Information (Attachment 9-1)

Mr. Gibbs stated two (2) actions had been taken with penalties of \$16,500.

The Board accepted this item as information.

Item 10: Administrative and Consent Orders issued by Environmental Quality Control (October 1, 2004 through November 30, 2004) – For Information (Attachment 10-1)

Ms. Claire Prince, Director, Enforcement and Compliance Assistance, Environmental Quality Control, stated fifty (50) orders had been issued with penalties of \$279,560.

After discussion, *the Board accepted this item as information.*

Item 11: 2004 State Health Plan – Open Heart Surgery criteria under Section (5) A items 1 and 2 and the Ambulatory Surgery Facility (ASF) section of the 2004 South Carolina Health Plan that were deferred until supplemental comments could be received – For Action (Attachment 11-1)

The Board of Health and Environmental Control approved the majority of the 2004 South Carolina Health Plan on October 14, 2004, but deferred action on these two sections of the Plan. The State Health Planning Committee requested supplemental comments on these two sections of the Plan.

The State Health Planning Committee met on December 1, 2004 to review the comments. After reviewing the comments and staff recommendations, the Committee voted to approve the attached two sections of the Plan and present them to the DHEC Board for approval.

Dr. Buckhouse moved, seconded by Mr. Blackmon to approve these two sections of the 2004 South Carolina Health Plan (Attachment I) for use in the Certificate of Need (CON) Program and that all applicable CON applications received after January 13, 2005, be reviewed under these sections of the 2004 South Carolina Health Plan and to change the name to the S.C. State Health Plan 2004/2005. Approved.

The Board accepted this item as information.

Item 12: Agency Affairs

Commissioner Hunter reported the following:

Chlorine Spill in Graniteville;
Influenza Vaccine;
Infant Mortality Press Release (Attachment 12-1);
“Too Small – Too Soon” Campaign;
Voluntary Separation Program.

Item 13: Legal Report – For Information

Mr. Carl Roberts updated the Board on legal issues.

Mr. Blackmon moved, seconded by Mr. Brazell, to go into Executive Session for the purpose of receiving legal advice. Approved.

While in Executive Session, no actions were taken.

The meeting adjourned.

All referenced attachments are made a permanent part of these minutes.

Respectfully submitted,

L. Michael Blackmon
Secretary of the Board

Minutes approved this 10th day of February 2005.

ATTEST:

Elizabeth M. Hagood
Chairman

Attachments

- 0-1 Agenda
- 0-2 Sign-in Sheet
- 1-1 November 10, 2004, Board Meeting minutes
- 2-1 Monthly Award for Excellence
- 3-1 **Motion to Dismiss** – Gulbis vs. SCDHEC, Docket No. 03-ALC-07-257-CC
- 3-2 Verbatim Transcript
- 4-1 **Public Hearing** – Proposed Revision of Regulation 61-3
- 4-2 Public Hearing Sign-in Sheet
- 4-3 Verbatim Transcript of Public Hearing
- 5-1 **Public Hearing** – Proposed Amendment of Regulation 61-62
- 5-2 Public Hearing Sign-in Sheet
- 5-3 Verbatim Transcript of Public Hearing
- 6-1 **Public Hearing** – Proposed Amendment of R-61-105
- 6-2 Public Hearing Sign-in Sheet
- 6-3 Verbatim Transcript of Public Hearing
- 7-1 Proposed Amendment of R.61-63
- 8-1 Proposed New Regulation 61-____, Emergency Health Powers Act
- 9-1 Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation
- 10-1 Administrative and Consent Orders issued by EQC
- 11-1 2004 State Health Plan
- 12-1 Infant Mortality Press Release